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attention to: BLM/Justin Abernathy date: 9/15/14

company: Trout Unlimited BLM from: Skane CRO

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comments: please e-mail confirmation to scross@tu.org

Protest of BLM UZ 1114 -173 NOV. 2014 Lease Sale

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September 12, 2014

Attn: Justin Abernathy
Utah Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, UT 84101

Sent via fax to (801) 539-4237

RE: Protest of Lease Parcel Number UTU90776 (UT1114 – 173) offered in the November 2014 Utah BLM Competitive Oil and Gas Lease Sale

Trout Unlimited (TU) respectfully protests, pursuant to 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Bureau of Land Management's (BLM) lease sale offering of Parcel Number UTU90776 (UT1114 – 173), (hereinafter referred to as the "Parcel") in Utah's scheduled November 18, 2014 Competitive Oil and Gas Lease Sale. Trout Unlimited protests the offering of this Parcel for the following reasons:

- Lack of NEPA analysis and conflicts with Colorado River cutthroat trout (CRCT) populations and recovery efforts in the Book Cliffs.
- Applicable lease stipulations have not been applied to split estate lands in which the surface is administered by the State of Utah as part of the Book Cliffs Wildlife Management Area.

~~TU respectfully requests that the BLM apply its lease stipulations to split estate lands within the Parcel before leasing the Parcel.~~

I. Interest of the Protesting Party

TU has approximately 1,500 volunteers and four full-time staff in the State of Utah. Our mission is to protect and restore coldwater fisheries and their habitats in Utah and across the West. Consistent with that mission, it is TU's policy to encourage energy development in a way that meets the needs of people while eliminating, minimizing, or mitigating the impacts to coldwater fisheries and their watersheds. TU works to ensure that energy projects are designed, sited, constructed, operated, and decommissioned in a manner that conserves coldwater fisheries and their watersheds.

As a Supporting Organization to the CRCT Agreement^o and Strategy, TU has a vested interest in the conservation of CRCT in the Willow Creek watershed. We have supported efforts to restore populations of this native trout in the drainage, including Meadow Creek, which a portion of the Parcel

encompasses. Moreover, TU members residing in the region recreate in the Book Cliffs area and enjoy angling in the Willow Creek watershed.

II. General Comments

TU participated in the public process leading up to this lease sale, providing comments to the draft Environmental Analysis (EA). In our EA comments submitted July 14, 2014, we requested that the Parcel be deferred so that unresolved issues, such as the lack of any CRCT analysis and inadequate mitigation measures, could be addressed and resolved.

Since filing our comments, we have confirmed¹ that the BLM does not intend to apply stipulations to those portions of the Parcel that are split estate with the surface estate being part of the Book Cliffs Wildlife Management Area. This is concerning to TU and we feel that BLM may be misinterpreting their legal obligations and authority to restrict oil and gas development in split estate situations. We remind the BLM that they are one of the co-signers to the CRCT Agreement and Strategy, including the latest 2013 updates to the goals and objectives for protecting CRCT habitat and populations. If adequate stipulations are not applied to the split estate portions of the lease, we have concerns that efforts to restore cutthroat trout to Meadow Creek could be compromised.

III. Statement of Reasons

A) Lack of analysis and conflicts with Colorado River Cutthroat Trout populations and recovery efforts in the Book Cliffs.

TU's EA comments highlighted the fact that the draft EA fails to consider the effects of oil and gas development on significant fisheries resources, including CRCT. This remains true in the revised Final EA, which continued to omit CRCT from the ~~Affected Environment, Environmental Effects and Cumulative Effects~~ discussion and analyses.

The most current status assessment² for CRCT shows that a Conservation Population is located in Meadow Creek, and is present on the offered Parcel (see Map). Additionally, a population of CRCT inhabits Willow Creek, also located on this lease Parcel. The CRCT population in Willow Creek is not designated as a Conservation Population because the genetics are less than 90% pure; however, this population remains an important trout population in need of conservation, as discussed in the 2013 CRCT Rangewide Assessment, due to a variety of potential threats including isolation from surrounding watersheds and climate change.

¹ Personal communication with Utah BLM staff on September 9, 2014, stating that "the Vernal RMP does not impose surface stipulations on non-BLM surface".

² Hirsch, C.L., M.R. Dare, and S.E. Albeke. 2013. Range-wide status of Colorado River cutthroat trout (*Oncorhynchus clarkii pleuriticus*): 2010. Colorado River Cutthroat Trout Conservation Team Report. Colorado Parks and Wildlife, Fort Collins.

[illegible]

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the Record of Decision (ROD) and Resource Management Plan (RMP, 2008) for the Vernal Field Office directs the agency to implement this Agreement and Strategy.³ The stated goal of the CRCT Strategy is:

To assure the long-term viability of CRCT throughout their historic range, areas that currently support CRCT will be maintained, while other areas will be managed for increased abundance. New populations will be established where ecologically and economically feasible, while the genetic diversity of the species is maintained. The cooperators envision a future where threats to wild CRCT are either eliminated or reduced to the greatest extent possible.

Despite CRCT being present on lease Parcel UT-1114-173 and the BLM's commitment to conserving and restoring this important native trout species, the revised EA for the November 2014 Oil and Gas Lease Sale makes no mention of CRCT, omitting it from the Affected Environment, Environmental Effects and Cumulative Effects analysis. We note that the EA does, however, include its analysis numerous other fish and wildlife species in the EA, including species that are listed as BLM Sensitive species, such as Burrowing Owls, and other native fish species with documented Conservation Agreements, such as Bluehead Sucker, Flannelmouth Sucker, Roundtail Chub. Considering that CRCT are both a BLM Sensitive Species and a Conservation Agreement species, the complete lack of analysis in the EA is particularly concerning.

In response to TU's draft EA comments, the BLM provides no rationale as to why the EA fails to acknowledge CRCT, only stating that the reintroduction area is "entirely located on state administered lands and is outside the scope of the VRMP" and that "stipulations, including the No Surface Occupancy stipulation, would be sufficient to protect the fish and their habitat within the scope of the BLM's authority." (Revised Final EA, p. 120) While this response doesn't address the lack of analysis, it does raise an important issue: without any analysis, the statement that stipulations would be sufficient is completely unsupported. In other words, without first taking a hard look at the effects of reasonable foreseeable development on CRCT, the BLM cannot reasonably conclude that stipulations would be sufficient.

B) Applicable lease stipulations have not been applied to split estate lands in which the surface is administered by the State of Utah as part of the Book Cliffs Wildlife Management Area

The Vernal Field Office does not intend to apply relevant stipulations on split estate portions of the Parcel and we feel that BLM is misinterpreting their legal obligations and authority to restrict oil and gas development in split estate situations. In this case, it is particularly concerning given that the surface lands are public lands managed for conservation purposes by the Utah Division of Wildlife Resources as part of the Book Cliffs Wildlife Management Area. While the Vernal Field Office, apparently, does not feel that the BLM has the legal authority to enforce surface restrictions on non-BLM surface, other BLM field offices in Utah and other states approach the issue much differently.

³ Special Status Species Management Decision 15 states: "Implement Conservation Agreement and Strategy for Colorado River cutthroat trout in the states of Colorado, Utah, and Wyoming (signed April 2001), or more recent revisions of this agreement of which the BLM is a signatory." (Vernal ROD and Approved RMP, 2008, p. 130)

For instance, the Butte Field Office in Montana has stated that:

The lease stipulations developed in the RMP are applicable to both public domain lands and split estate lands as the BLM has legal responsibilities for oil and gas leasing and operations on split estate lands. The BLM has responsibilities under the Federal Land Policy and Management (FLPMA). In the case of FLPMA, the BLM is required to indicate in RMPs how the federal mineral estate would be managed, including identification of lease stipulations. In order to meet the consistency requirements of FLPMA the BLM has applied the same standard of environmental protection to split estate lands as to federal surface.⁴

Similarly, the draft EIS for the Bighorn Basin RMP revision in Wyoming addresses split estate, providing:

The BLM is required to declare how the federal mineral estate will be managed in the RMP, including identification of all appropriate lease stipulations (43 CFR 3101.1; BLM Manual Handbook, H-1624-1, IV.C.2). To be consistent with the requirements of the FLPMA, it is necessary to apply the same standards for environmental protection of split-estate lands as applied to the federal surface (BLM Manual 3101.91 B.1)⁵

Moreover, under the authority and requirements of the Federal Land Policy and Management Act (FLMPA), other BLM field offices have developed and applied stipulations in similar situations where BLM minerals underlie state-managed surface. For instance, the RMP for the Moab Field Office includes an NSO within Dead Horse Point State Park. Additionally, the Colorado's Kremmling Field Office has included in their Proposed RMP an NSO stipulation for all State Wildlife Areas.

Lastly, the Record of Decision (ROD) for the Vernal RMP (2008) states that "Decisions and actions of the Approved RMP will only apply to BLM lands or BLM mineral estate where there is a split in ownership." (ROD, p. 4.) Such language indicates that RMP decisions (such as stipulations for oil and gas leasing) will apply to both BLM lands and BLM minerals estate in split estate situations.

Considering FLPMA requirements, the actions of other field offices, and language within the Vernal Field Offices own RMP ROD, it seems that the Vernal Field Office does have the authority – and legal obligation – to apply stipulations for resource protection to all of the Parcel, including those portions in which the surface is managed by the Utah Division of Wildlife Resources. If the BLM chooses to lease this Parcel without applying stipulations to the entire parcel, it appears that the action will be in conflict with requirements derived from FLPMA, as noted above in the examples from the Butte and Bighorn Basin Field Offices.

In general it seems that the application of RMP stipulations in split estate situations is an area in which clearer direction is needed for the Vernal Field Office as a whole. Based on the authority cited above, we

⁴ Proposed Butte Resource Management Plan and Final Environmental Impact Statement, September 2008, p. 761

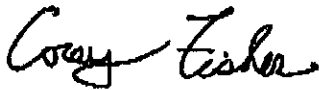
⁵ Bighorn Basin Draft RMP and Draft EIS, April 2011. Appendix A-3

encourage the BLM to apply its stipulations to the entirety of the lease Parcel, including lands that are split estate.

IV. Conclusion

TU values the BLM as a partner in the conservation and restoration of CRCT and it is rare that we file lease sale protests. Instead, we strive to work collaboratively with the BLM and stakeholders through the pre-leasing public engagement process and we appreciate the BLM's commitment to resolving issues without the necessity of lease sale protests. In principle, we are not opposed to leasing the parcel in question. However, considering the deficiencies regarding adequate analysis of CRCT issues, and unresolved questions surrounding the application of stipulations in split estate situations, this is one instance in which TU believes that a protest is warranted in order to resolve these issues and to ensure that once the irretrievable commitment of leasing is made, that adequate stipulations are included in the lease terms. Thank you for the consideration of our perspective and we look forward to working with the BLM to resolve these issues.

Sincerely,



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